

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)
)
Energy Gases, Inc.,) Docket No. EPCRA-02-2000-4002
)
Respondent)

ORDER DENYING EPA'S MOTION TO STRIKE

The U.S. Environmental Protection Agency ("EPA") has filed a motion seeking to strike portions of Energy Gases, Inc.'s ("Energy Gases"), prehearing exchange on the grounds that respondent has improperly referenced settlement information. Also, EPA seeks an order either striking, or precluding, respondent's reference to Supplemental Environmental Projects ("SEPs") which purportedly took place after the events which prompted EPA's filing of the present complaint.

With respect to settlement matters, EPA moves to strike settlement figures appearing in respondent's proposed Exhibits 15, 17, 20, 21, 22, 23, and 24. As support for its motion, EPA cites Procedural Rule 22(a), 40 C.F.R. 22.22(a), and Rule 408 of the Federal Rules of Evidence, both of which prohibit the introduction of settlement matters into evidence.

In response, Energy Gases states that it "will strike the settlement dollar amounts" set forth in these documents. E.G. Resp. at 1. This approach meets with EPA's satisfaction. EPA Reply at 1. Accordingly, EPA's motion to strike is *denied* as being moot.

EPA's motion regarding the SEPs also *is denied*. While EPA appears to be on solid ground in challenging the relevance of any after-the-fact SEPs, a proper evidentiary ruling on this matter can be made only in the context of a hearing. It is simply too early to tell whether these SEPs are not relevant to this case.

Carl C. Charneski
Administrative Law Judge

Issued: October 31, 2001
Washington, D.C.